

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT
COURT DISTRICT OF UTAH

OCT - 5 2009

BY D. MARK JONES, CLERK
DEPUTY CLERK

DANA LYDELL SMITH,

Petitioner,

v.

WARDEN PHILLIP VALDEZ et al.,

Respondents.

Case No. 2:09-CV-620 DB

District Judge Dee Benson

O R D E R

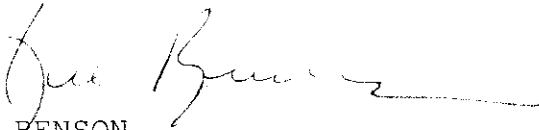
Petitioner, Dana Lydell Smith, has filed a habeas corpus petition. See 28 U.S.C.S. § 2254 (2009). He is an Idaho prisoner challenging an Idaho conviction. In fact, almost two months before he filed this petition, he filed a very similar petition in the federal district court in Idaho. See *Smith v. Valdez*, No. 1:09-CV-251-CWD (D. Idaho May 26, 2009).

For two reasons, the Court denies this petition. First, "the action should have been filed in the district in which [Petitioner] was convicted and sentenced, i.e., the District of [Idaho], and the District Court for the District of [Utah] would have no jurisdiction." *Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000). Second, a second or successive habeas petitions, such as the one here, cannot be filed in district court until the petitioner "move[s] in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C.S. § 2244(b)(3)(A) (2009).

IT IS THEREFORE ORDERED this petition is DENIED for lack of jurisdiction. Considering that essentially the same petition is pending in the apparently proper district, this Court declines to transfer the petition to the District of Idaho.

DATED this 5th day of ^{October,} September, 2009.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Dee Benson", written over a horizontal line.

DEE BENSON
United States District Judge